

Sanchez v 475 Doughty Blvd., LLC

2016 NY Slip Op 30532(U)

March 31, 2016

Supreme Court, New York County

Docket Number: 161026/2015

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
URIEL SANCHEZ,

Plaintiff,

-against-

475 DOUGHTY BOULEVARD, LLC and
WORLDNET-SHIPPING, USA, INC.

Defendants.

-----X
CAROL R. EDMEAD, J.S.C.:

Index No.: 161026/2015

DECISION AND ORDER

Motion #001

MEMORANDUM DECISION

Background

In this premises liability case, Defendant 475 Doughty Boulevard, LLC (“Doughty”) moves pursuant to CPLR 503, 510, and 511 to change venue to Nassau County. Doughty argues that inasmuch as plaintiff’s basis of venue is premised upon Doughty’s place of business, and Doughty’s principal attests that consistent with the New York State Division of Corporations website print-out, such place of business was designated as Nassau County, New York County is an improper venue. Further, venue is appropriate in Nassau County, as Plaintiff Uriel Sanchez resides in Nassau County, the subject accident occurred in Nassau County, and, based upon information and belief, Plaintiff received medical treatment in Nassau County. Finally, Doughty argues that there is no prejudice to Plaintiff because this action is in the pre-discovery phase.

Plaintiff opposes the application, arguing that Plaintiff is entitled to choose the venue based on Doughty’s designation of a New York County address (1400 Broadway, 29th Floor) with the New York Secretary of State. Plaintiff also submits a print out from a Lexis Nexus search which identifies the aforementioned New York County as Doughty’s address.

In reply, Doughty points out that the documents filed with the Secretary of State designate New York County as the address for service of process only. Doughty also notes that Plaintiff does not dispute that the accident site and Plaintiff's residence are in Nassau County.¹

Discussion

On a motion to change venue, a moving defendant has the initial burden to show that the venue chosen by the plaintiff was improper (*Singh v Empire Intern., Ltd.*, 95 AD3d 793 [1st Dept 2012] citing *McKenzie v. MAJ Tr.*, 204 AD2d 154, 611 NYS2d 191 [1st Dept 1994]). Doughty argues that it has met its burden by demonstrating that its principal place of business is in Nassau County, and that it should therefore be considered a resident of that county.

CPLR 503(c), as relevant here, provides that a New York corporation "shall be deemed a resident of the county in which its principal office is located." Courts look to the certificate of incorporation to determine a corporation's principal place of business for purposes of CPLR 503(c) (*Discolo v Riv. Gas & Wash Corp.*, 41 AD3d 126, 126 [1st Dept 2007] [transfer to Kings County appropriate where certificate of incorporation had been amended before the action to provide that "[t]he office of the corporation is located in Kings County, New York"]). "The designation of a county as the location of a corporation's principal office in a certificate of incorporation is controlling in determining corporate residence for the purposes of venue, even if the corporation maintains an office or facility in another county" (*Addo v Melnick*, 61 AD3d 453, 453 [1st Dept 2009] [citation and quotation omitted], citing *Altidort v. Louis*, 287 AD2d 669, 670 [2d Dept 2001]).

¹ While Defendant Worldnet-Shipping, USA, Inc. ("Worldnet") has answered (*NYSCEF 14*), the Court has no record of Worldnet taking a position as to 475 Doughty's application.

The New York State print out listing “Nassau County,” under the “Status Information” portion the document, coupled with the affidavit of Doughty’s principal, Albert Elias, establishes that Nassau County is Doughty’s place of residence. Thus, the Court finds that Nassau County is, indeed, Doughty’s corporate principle place of business.

To the extent that the Certificate of Incorporation also lists a New York County address, the Certificate clearly designates that address as one where service of process is to be sent when the Secretary of State is served on Doughty’s behalf. This is distinct from the designation of a county of residence (*see* Business Corporation Law § 402[a][3], [7]; *Tener Consulting Services, LLC v FSA Main St., LLC*, 23 Misc 3d 1120(A) [Sup Ct Westchester County 2009] [explaining that basis for the *Altidort* holding was not Kings County’s designation as an address for service of process, but because the certificate of incorporation listed Kings County as the county of defendant’s principal place of business] *citing* 287 AD2d at 670; *see also Nadle v L.O. Realty Corp.*, 286 AD2d 130, 132 [1st Dept 2001] [change of designation of post office address for the forwarding of process from the Secretary of State is not the same as amending a foreign corporation’s designation of its principal place of business within the State of New York]).

Further, to the extent that Plaintiff asks the Court to consider a print out from a Lexis corporation search, even assuming its admissibility, the document merely states the New York County address noted above, which is demonstrated as the address for service of process.²

In addition, there is also ample additional evidence to suggest that Nassau County is the appropriate venue for trial under CPLR 510 (3). Such section “provides for a discretionary change of venue where ‘the convenience of material witnesses and the ends of justice will be

² The search also notes that Doughty is affiliated with a Nassau County address.

promoted by the change” (*Shedrick v Asplundh Tree Expert Co.*, 278 AD2d 49 [1st Dept 2000]). There is no dispute that Plaintiff’s place of residence and the site of the subject accident were both in Nassau County (*see Doughty Exh A* [Complaint] ¶¶ 1, 4); *Shedrick*, 278 AD2d at 49-50) [transfer to Suffolk County was warranted where accident occurred in Suffolk County, plaintiffs resided there and were treated at hospitals there, Suffolk County Police Department responded to and investigated accident, and plaintiffs’ treating physicians and physical therapists all maintained Suffolk County addresses]; *Tesfaye v Swett*, 227 AD2d 150 [1st Dept 1996] [fact that accident occurred in New York County “provided ample basis for a discretionary change of venue to New York County”]). Beyond the Manhattan address designated for service of process, the record does not reveal any demonstrable connection between Doughty and New York County. Because no other viable venue for transfer has been presented by Plaintiff, transfer to Nassau County is deemed appropriate.

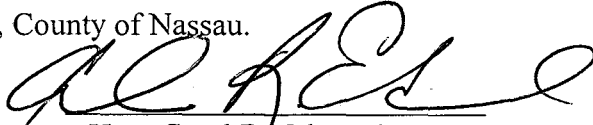
Conclusion

Based on the foregoing, it is hereby

ORDERED that Defendant 475 Doughty Boulevard, LLC’s motion to change venue is hereby granted; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of Nassau, and upon service by movant of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of Nassau.

Dated: March 31, 2016


 Hon. Carol R. Edmead, J.S.C.
HON. CAROL R. EDMED
J.S.C.